

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 02/15/01?
b. The request was received on 02/08/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
 - a. TWCC-60 and Letter Requesting Dispute Resolution dated 04/10/02
 - b. HCFA-1450s
 - c. EOBs
 - d. Reimbursement data
 - e. Medical Records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
 - a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/30/02
 - b. HCFA's
 - c. Audit summaries/EOB
 - d. Medical Records
 - e. Reimbursement data
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/18/02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 04/19/02. The response from the insurance carrier was received in the Division on 05/01/02. Based on 133.307 (i) the insurance carrier's response is timely
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: letter dated 04/10/02
"We feel that 23% paid on a left knee arthroscopy with a chondroplasty is not fair or reasonable. We feel that (Carrier) should reimburse us more appropriately as \$1118.00 does not cover our cost to perform this surgery."

2. Respondent: letter dated 04/30/02
“Carrier has determined that \$1,118.00 reimbursement for surgical care is fair and reasonable reimbursement. While Ambulatory Surgical Care is not subject to MAR, the Medical Fee Guidelines do provide some evidence of a fair and reasonable amount. Provider has not justified why charging four times the amount of \$1,118.00 is fair and reasonable.”

IV. FINDINGS

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 02/15/01.
2. The provider, an ambulatory surgery center, billed a total of \$4,869.52 on the DOS in dispute.
3. The carrier reimbursed \$1,118.00 for the DOS in dispute and their EOB has the denial “M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE.”
4. The amount in dispute is \$3,751.52, the difference between the billed amount and the amount reimbursed.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (d) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. The carrier has submitted their methodology and though, the entire methodology may not necessarily be concurred in by the Medical Review Division, the requirements of the referenced Rule have been met.

The provider has submitted reimbursement data. The provider has submitted EOBs from other carriers that have the same ICD-9 code as the date of service in dispute. These EOBs indicate that the provider has received reimbursement from 85% to 100% of the billed amount.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement and that meets the requirements of Rule 133.304. The provider has

submitted EOBs from other carriers in an effort to document fair and reasonable reimbursement. Regardless of the carrier's methodology or response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. An analysis of recent decisions of the State Office of Administrative Hearings indicate minimal weight should be given to EOBs for documenting fair and reasonable reimbursement. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 7th day of June, 2002.

Larry Beckham
Medical Dispute Resolution Officer
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.